

**Eastern Virginia Ground Water Management Area Regulation Amendments and
Ground Water Withdrawal Regulation Amendments
Regulatory Advisory Panel Meeting
James City Williamsburg Community Center
December 9, 2009- 9:30 a.m.**

RAP members present

David Bailey, The Environmental Law Group
Ron Harris, Newport News Waterworks, representing the Va. Section of the American Waterworks Association
Gayl Fowler representing SAIF Water Wells, Inc.
Christian Volk, Ph.D., Water Quality Manager, representing VA/MD-American Water
Thomas Roberts, Smurfit-Stone Container, representing Mission H₂O
Britt McMillan, Malcolm Pirnie, representing Eastern Shore of Virginia Ground Water Committee
Larry Foster representing Hampton Roads Planning District Commission
Susan Douglas, Va. Dept of Health
Curtis Consolvo, GeoResources
Frank W Fletcher, PhD, PG, Retired professor
Bill Pennell, Lancaster County Administrator
George Harlow, U.S. Geological Survey
Steve Werner, (alternate for Jesse Royall, Sydnor Hydro)
Harry Critzer (alternate for Mike Neuhard, Deputy County Administrator, Stafford County
Lewis Lawrence- Middle Peninsula Planning District Commission
P.J. Smith (alternate for Sheryl Raulston) representing VMA
Butch Nottingham-VDACS
Lynn Gayle, Taylor and Fulton, Inc. and member of the Va. Potato and Vegetable Grower's Association

RAP Members not present

Sheryl Raulston, International Paper- Franklin Mill, representing VMA
Jesse Royall, Sydnor Hydro (attended a portion of the meeting)
John D. O'Dell, Water Well Solutions, LC)

Public Attendees

Jeff Fletcher
Lisa Hardy
Whitney Katchmark
Barry Fitz-Jones
Gina Shaw

DEQ Staff

Ellen Gilinsky
Scott Kudlas
Robin Patton

Hank Ghittino
Melissa Porterfield
Erinn Tisdale

Introductions and Administrative Issues

Melissa Porterfield welcomed everyone to the meeting and introductions were made. All individuals present were asked to sign in on the attendance sheet.

Today the GW RAP will be reviewing draft language distributed to the group. The language distributed is for discussion purposes only and is not proposed regulatory language.

Review of pre-application meeting language

Pre-application meeting language was discussed. The purpose of the pre-application meeting is to have a mutual exchange of information on the project and applicable regulatory requirements. The Virginia Department of Health (VDH) would like to be notified only when a pre-application meeting is being held for a public water supply system. There are some projects in which VDH is not involved in. The goal of the pre-application meeting is to have a meeting with the applicant that identifies where VDH and DEQ have overlapping jurisdiction. There is language in the VWP regulations that may be appropriate to use that provides the applicant the opportunity to request all appropriate agencies to participate. DEQ will re-draft language to address these concerns. In general VDH needs to be coordinated with concerning applications that involve public waterworks.

A question was raised concerning whether or not there are any additional parties that need to be involved at the pre-application meeting, specifically those involved with private wells that could potentially be impacted by the permit. A public comment period is held at the end of the permit process that provides all an opportunity to comment on the permit. Private well owners, if concerned with the permit, would have an opportunity to review the draft permit, including the mitigation plan, prior to issuance of the permit. A pre-application meeting's goal is to make the applicant aware of any coordination issues related to VDH and DEQ and to be able to submit to DEQ a complete application.

Pre-application meetings can be held to assist with the applicant gaining knowledge concerning the well construction requirements, to clarify requirements that are sometimes different between agencies, and to facilitate the coordination of testing that may be required. These meetings can help the applicant to then understand where there are differences and similarities with the DEQ and VDH permit processes.

Review of incomplete application language

The group discussed language concerning the need to have a way to remove applications from processing that are not making a good faith effort to provide a complete application. Some members indicated that the 180 day timeframe to respond is a reasonable amount of time to pass prior to stopping review of an application. Others suggested that language be added to the regulations indicating that as long as progress is being made to respond, the application should continue to be processed. The issue that this is attempting to address is a time management issue for the agency and a fairness issue for the other applicants whose permits applications are not being reviewed since time is being devoted to applicants that are not responding to the agency. There was concern expressed with having a permit application withdrawn from processing and then the applicant resubmits a new application and permit fee. Withdrawing a permit application would trigger the agency into taking action to send applicants that are withdrawing groundwater without a permit to enforcement and they would have to re-submit an application.

A suggestion was made to consider suspending processing the application if the applicant does not provide required information. Suspend the application, then provide the applicant with a reasonable amount of time to respond. Then if they did not respond, the next step would be a tentative decision to deny the permit since the application is incomplete.

In general, the applications are placed in a queue once the applications are complete. Once the application is complete, an allocation is placed in the model for a specified amount of water. There was a thought that permits that are suspended should have their reserved allocation removed from the model.

The group discussed the definition of suspend, in the context of what it means and what would happen once the application was un-suspended. The group discussed if the term suspend means set aside the application or send the application to the end of the line for review.

A suggestion was made for the agency to consider changing the word “consider” on line 3 of the draft language to “the board finds.”

A suggestion was made for the agency to consider changing the language on line 4 to state that the agency shall give notification to the applicant of deficiency in the application and provide a reasonable time to respond.

The group discussed that an endpoint is needed for those applications that are not progressing through the review process. A suggestion was made to provide the board with the option of suspending a permit application until the deficiencies are addressed.

A suggestion was made to include an intermediate step for the board to suspend processing, then give the applicant a reasonable amount of time to respond with information. If there is failure to respond by the applicant, the next step would be to tentatively deny the permit application. The tentative decision to deny the application

would be due to an incomplete application. When an application is suspended, the application, once re-submitted would be placed at the end of the line, but would not be subject to paying another permit fee. Permits that are denied should not have an allocation in the model.

A suggestion was made for the agency to examine if there needs to be regulatory authority to administratively continue permits, and consider if there should be a limit on administrative continuance, and the reasons for administrative continuance.

A suggestion was made to fix the gender reference on lines 11 and 13.

Clarification is needed in this section concerning how historical withdrawals vs. expansions and new withdrawals will be addressed.

Consider adding language on administrative continuance to this section. Consider time and/or conditions that may need to be added.

The agency will discuss internally the suggestions and issues raised during the meeting and will revise the language and provide it back to the group for review.

Discussion concerning the Aquifer testing and mitigation concepts

Streamline processes in these regulations is a goal. Two areas that have been identified that can be time consuming are aquifer testing and the development of mitigation plans. A discussion took place concerning whether there are any options that can be included in the regulations to speed up the permitting process. There may be some ways we can place some options in these regulations to streamline the processing of permits.

Currently the Area of Impact (AOI) is modeled to be determined. One option to include in the regulations would be to use the AOI identified in the model utilized by the agency and not verify the scope of the AOI through aquifer testing. Also there may be an option to have a group join together to form a mitigation plan. Hampton Roads Planning District Commission (HRPDC) has a mitigation bank that is used to address impacts to homeowner wells from their member's permitted groundwater withdrawals. An applicant could choose to use one or both of these options, or neither option.

With the options identified above, the applicant will need to weigh the costs associated with defining the AOI against the requirement that they will be required to have potentially a larger mitigation area. This is more of an issue for smaller withdrawers since the model's grid size is about a 3 ½ mile square and the applicant would need to likely accept the entire grid size as a mitigation area. The alternative would be to perform aquifer testing to verify the AOI for the withdrawal and possible have a smaller mitigation area.

Whitney Katchmark provided an overview of the HRPDC program. The program includes municipalities in the Hampton Roads area and provides a process for impacted wells to be addressed. Modeling is conducted based on permitted amounts to identify the

percentage of responsibility of all the municipalities for the impact on a specific impacted well. This is a cost savings for the localities and is a fast way to address mitigation of impacts to wells. HRPDC includes localities, but commercial and industrial withdrawals are not currently included in their program. A mitigation program developed could potentially include all withdrawers within an area. Members had the opportunity to ask Whitney Katchmark about the HRPDC program.

Members would voluntarily establish a mitigation program. In general, these mitigation banks would address impacts in their area of impact. The ideas listed above would be options and would not be required under the regulations.

Mitigation plans and the applicability of the plans was discussed. It was explained to the RAP that the regulations contain rebuttable presumption meaning that permittees may demonstrate that they are not the reason another well has been impacted if they do not believe their withdrawal caused the problem of concern.

The group discussed the use of the term lawful withdrawal and all withdrawals and the fact that these terms are both used in the regulations in different sections. A question was raised about how withdrawals that were not permitted by VDH or DEQ would be addressed in this context and whether these withdrawals were lawful withdrawals. There was also discussion concerning how the last permittee to begin withdrawing water would be the permittee targeted as the cause of the inverse impact.

In conclusion, the agency will draft language to circulate to the RAP concerning these regulatory options for review since the group believes that these are options that should be considered.

Lunch Break 12:25-1:35

Public Forum

No one signed up for the public forum and a public forum was not held.

Water Conservation and Management Plan

Language was distributed concerning the water conservation and management plans for discussion. The language distributed attempted to consolidate requirements in section 9VAC 25-610-100 B and C into 100 B. Additional language to clarify what is required in Water Conservation and Management Plans was added to provide applicants with more information on the contents of the water conservation and management plan. In general the group indicated that this consolidation made sense.

At the previous GW RAP meeting a member of the public spoke during the public forum indicating that the agency should consider the water supply plans when revising these regulations. Draft language has been added to this section of the regulations to address this requirement. A suggestion was made to clarify the language in B to specify that the water conservation and management plans should be consistent with water supply plans within the geographic area.

The draft language contains the word “feasible”. A question was asked concerning how “feasible” is defined. It is defined as practicable of being done concerning logistics and cost. This would need to be documented by the applicant.

There was a suggestion that the word “assurances” be changed to a different word in this section. Questions were asked concerning how assurances would be defined. A suggestion was made to change the word to “shall” on line 33 of the draft in place of the words “will be”.

A question was raised concerning the contents of the water conservation and management plans for agricultural users. Staff indicated that for agricultural users, the irrigation management plans can be included in conservation and management plans and that the agency has attempted to work with agricultural users to make these plan requirements similar.

A suggestion was made to look at possibly having different requirements for water conservation and management plans for water supplies vs. industrial and agricultural users since these uses are different and the ways that water will be conserved and managed under these uses will differ.

A suggestion was made to change the word “consumption” on line 16 to “withdrawal” to be consistent with the usage of the word elsewhere in the regulations.

Discussion took place concerning when a water shortage would be declared- when would the restrictions begin- any portion of the service area or the entire area? When restrictions begin is a concern since groundwater use increases during periods of drought (due to less surface water flow and increased irrigation needs.) Maybe the solution is to implement the drought conservation measures for all localities covered under the water supply plan when any locality that is covered under the water supply plan declares a water shortage. This was an approach that a planning district had used previously to handle this issue in the past.

For industry, it may be best to be efficient with water use and conservation year round, since there may not be areas for reducing usage. During discussions it was pointed out that the term beneficial use in statute does not include industrial use. A suggestion was made to change the language on line 44 to state “ that restricts or prohibits all nonessential uses such as” to address this issue.

The water conservation and management plan needs to address non-essential uses. A suggestion was made for the agency to look at nonessential use.

Discussion took place concerning how the draft language B5 impacts multi-jurisdictional plans. For examples, there are different localities utilizing water from other localities. In some cases, these agreements are inclusive of requirements for local ordinances to be adopted in times of drought. In other cases, a locality may provide water to customers

directly (individual rate payer) in a different locality and there is a limit to the restrictions for water conservation that can be placed on the user by the locality supplying the water. The only option the locality has to control the water usage in these cases is through rate increases, which has proven to be a successful way to reduce water usage.

Members of the group mentioned placing a requirement for water reductions of a specified percentage to occur during drought conditions. The goal would be to reduce water usage during drought to levels below pre-drought usage. Comments were made concerning the difficulty of all users to be able to meet a specified reduction. For some users that conserve more water on a daily basis, it would be more difficult to achieve a reduction than other users. The state drought plan uses a percent reduction requirement.

In general, some RAP members stated that 610 B 5 is too prescriptive as currently written and members suggested that the agency look at this section and make it more results based to achieve the goal of reducing water usage. Consider including a statement such as “means that meet the requirement of reducing water withdrawals.” This would allow flexibility for ordinances, rate fee structures and limits on nonessential uses to be implemented by those that developed the plan in order to reduce the withdrawals.

Water reuse was mentioned as a way to conserve water, and a member questioned if Virginia was in a position to allow water reuse. DEQ staff responded that Virginia is allowing water reuse and is currently working on rain water harvesting guidance as well.

The agency will discuss these suggestions and revise the language.

Discussion of Unconfined Aquifer questions

Prior to the meeting, questions concerning the unconfined aquifer were distributed to the RAP. The members were given the opportunity to provide their answers to the group. This exercise was conducted to obtain information on the different viewpoints of the various members.

In general, there was no consensus reached on the answers to these questions. Some believe that use of the unconfined aquifer should be protected and others believe that the use of the unconfined aquifer should be unrestricted. Ideas such as a general permit for withdrawals from the unconfined aquifer were mentioned. The questions provided to the GW RAP are listed below.

List of Questions for GW RAP concerning unconfined aquifer issues-

1. What types of withdrawals (water usage type) should be allowed from the unconfined aquifer?
2. Should withdrawals from the unconfined aquifer be subject to less requirements? (less regulation or be regulated differently)
3. Should unconfined aquifer withdrawals not be regulated?
4. Should there be a general permit or streamlined permit available for withdrawals from the unconfined aquifer?

5. Should there be any prohibited withdrawals from the unconfined aquifer? (prohibited uses?)
6. Should there be a limit on individual withdrawals from the unconfined aquifer?
7. Should there be a requirement for users of the unconfined aquifer to measure the amount of water being withdrawn and limit the amount that can be withdrawn?
8. Should there be a higher level of oversight for certain unconfined aquifer withdrawals based on location, water usage, or other criteria?
9. If you relax restrictions on unconfined aquifer withdrawals, should proposed new developments be allowed to use the unconfined aquifer for irrigation?

During this part of the meeting a RAP member asked that a USGS report concerning the unconfined aquifer be distributed to the group. Melissa Porterfield will work with the RAP member and USGS to identify the report being referenced, and to determine the availability of the report and to find out how it can be distributed to the RAP.

Homework

Since the RAP did not complete discussion of the questions concerning agricultural use of the unconfined aquifer, RAP members were asked to provide answers to the questions listed below via e-mail to Melissa Porterfield by January 6, 2010.

List of questions concerning agricultural use of the unconfined aquifer

1. In some areas of Virginia, localities have attempted to limit agricultural uses of water to the water in the unconfined aquifer. What are the pros and cons of this approach? Issues such as insufficient volume, inadequate pressure, and water quality are some issues that have been identified.
2. Should agricultural users be limited to their use of confined or unconfined aquifers?
3. What defines an agricultural user? Crops, livestock, sod, nurseries? Should this term be defined in the regulations?

Conclusion-

The next meeting is being targeted for the first week of February 2010. Please respond to Melissa Porterfield with your availability if you have not already done so.

Parking Lot issues

The following issues were identified as issues that need to be discussed in the future. Issues were placed in the parking lot since they were not part of the scheduled discussions for the day.

- A short form/streamlined permit application process was suggested
- A suggestion was made to have a procedural primer for agricultural permits to assist applicants with submitting a complete application since those applications are different for those for municipal supplies. This would not be in the regulations, but would be a guidance document that would be a tool for the agricultural community.

The meeting adjourned at 3:20.